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United States
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Weaknesses in Awarding Fees for the Broad Area Maritime Surveillance Contract

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Acronyms and Abbreviations

BAMS	Broad Area Maritime Surveillance
CPAF	Cost-Plus-Award-Fee
FAR	Federal Acquisition Regulation
FDO	Fee Determining Official
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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ARLINGTON, VIRGINIA 22202-4704

November 2, 2010

MEMORANDUM FOR NAVAL INSPECTOR GENERAL
COMMANDER, NAVAL AIR SYSTEMS COMMAND
PROGRAM EXECUTIVE OFFICER,
UNMANNED AVIATION AND STRIKE WEAPON
DEPUTY ASSISTANT COMMANDER FOR CONTRACTS,
NAVAL AIR SYSTEMS COMMAND

SUBJECT: Weaknesses in Awarding Fees for the Broad Area Maritime Surveillance
Contract (Report No. D-2011-014)

We are providing this report for review and comment. This is first in a series of reports on the contract supporting the Broad Area Maritime Surveillance program. The Broad Area Maritime Surveillance contract is worth \$1.8 billion, and program officials did not have the proper controls in place to assess contractor performance and provide fair and reasonable award fee determinations for the contractor. We considered management comments on a draft of this report when preparing the final report.

DOD Directive 7650.3 requires that recommendations be resolved promptly. Some of the comments were only partially responsive, nonresponsive, or otherwise need additional consideration. Therefore, we request additional comments from the Program Executive Officer, Unmanned Aviation and Strike Weapons, and the Assistant Commander for Contracts, Naval Air Systems Command, on Recommendations 1.a, 1.b.(1), 1.b.(2)(a), 1.b.(2)(e), 1.b.(3)(b), 1.b.(3)(c), and 2.a-d by December 2, 2010. See the Recommendations Table on page ii of this report.

If possible, send a .pdf file containing your comments to audacm@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9071 (DSN 664-9071).

A handwritten signature in black ink, reading "Bruce A. Burton".

Bruce A. Burton
Deputy Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Weaknesses in Awarding Fees for the Broad Area Maritime Surveillance Contract

What We Did

This is first in a series of reports on the contract supporting the Broad Area Maritime Surveillance (BAMS) program. This report addresses award fees for the contract. The BAMS contract with Northrop Grumman has a value of \$1.8 billion and is in the third year of a seven year contract. BAMS program officials did not have the proper controls in place to assess contractor performance and provide fair and reasonable award fee determinations for the contractor.

What We Found

BAMS program officials did not:

- create a proper award fee plan, or
- justify \$4.1 million in fees paid and the use of about \$1 million in rollover fees.

Further, the BAMS contracting officer did not justify the use of a cost-plus-award-fee contract. These conditions occurred because the BAMS contracting officer did not perform his duties, and program officials were unaware of cost-plus-award-fee contract criteria and did not follow the award fee plan or applicable award fee guidance. As a result, the BAMS contracting officer and fee determining official may have erroneously paid up to \$4.1 million in fees to the contractor. By improving the award fee process, BAMS officials can mitigate the risk of erroneously paying as much as \$87.3 million for future award fees.

What We Recommend

Program Executive Officer, Unmanned Aviation and Strike Weapons, update and re-issue the

award fee plan to comply with Federal, DOD, and Navy award fee guidance.

Assistant Commander for Contracts, Naval Air Systems Command, instruct the BAMS contracting officer to conduct an analysis to determine whether a cost-plus-award-fee contract is appropriate for the BAMS program, review the rollover award fee payment, and recoup any overpayment.

Management Comments and Our Response

The Assistant Secretary of the Navy for Research, Development, and Acquisition responded on behalf of the Navy with specific comments for each recommendation provided by the Program Executive Officer, Unmanned Aviation and Strike Weapons; and the Assistant Commander for Contracts, Naval Air Systems Command. Generally, the comments did not satisfy the intent of our recommendations. We request additional information and comments by December 2, 2010. See the recommendations table on the back of this page.

Figure. BAMS Aircraft



Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Program Executive Officer, Unmanned Aviation and Strike Weapons	1.a, 1.b.(1), 1.b.(2)(a), 1.b.(2)(e), 1.b.(3)(b), and 1.b.(3)(c)	1.b.(2)(b), 1.b.(2)(c), 1.b.(2)(d), 1.b.(3)(a), and 1.b.(3)(d)
Assistant Commander for Contracts, Naval Air Systems Command	2.a-d	

Please provide comments by December 2, 2010.

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Introduction

Audit Objectives

This is the first in a series of reports on the contract supporting the Broad Area Maritime Surveillance (BAMS) program. Our overall objective for this audit was to determine whether Naval Air Systems Command officials complied with award fee procedures and paid appropriate fees to the BAMS contractor. See the appendix for a discussion of our scope and methodology.

Background on Broad Area Maritime Surveillance

The BAMS unmanned aircraft system is an acquisition category ID program with an approximate value of \$19.1 billion in FY 2008 constant dollars.¹ On April 18, 2008, the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD[AT&L]) approved the BAMS program for entry into the system development and demonstration phase (Milestone B) of the DOD acquisition process. The BAMS unmanned aircraft system is scheduled to achieve initial operational capability in FY 2015. The BAMS program will provide continuous maritime intelligence, surveillance, and reconnaissance information to joint forces and fleet commanders worldwide. The BAMS program will also provide DOD with the ability to continually detect, classify, and identify maritime targets. The BAMS program is administered by the Persistent Maritime Unmanned Aircraft System Program Office and overseen by the Program Executive Officer for Unmanned Aviation and Strike Weapons.

On behalf of the BAMS program office, a Naval Air Systems Command contracting officer awarded a \$1.2 billion cost-plus-award-fee (CPAF) type contract, N00019-08-C-0023, to Northrop Grumman Corp., Integrated Systems, on April 22, 2008. The contract was for the system development and demonstration of the BAMS unmanned aircraft system with a low-rate initial production option. Specifically, the contract was for the design, fabrication, and delivery of two unmanned aircrafts; one forward operating base; one system integration laboratory; and full mission simulation capability. On February 17, 2009, the contracting officer modified the contract to increase the cost of the system development and demonstration, which increased the overall value of the contract by approximately \$627 million. As of March 2010, the contract's value was \$1.8 billion.

According to the Federal Acquisition Regulation (FAR) Subpart 16.4, "Incentive Contracts," June 14, 2007, CPAF-type contracts consist of a base award fee amount that is fixed at inception and a judgmental award fee amount based on the Government's evaluation of contractor performance. The BAMS contract provided a 3-percent base award fee (\$32.1 million) and a 7-percent judgmental award fee (\$74.9 million) for the

¹ According to DOD Instruction 5000.02, "Operation of the Defense Acquisition System," December 8, 2008, an acquisition category ID program has a total research, development, test, and evaluation cost of \$365 million in FY 2000 dollars. Additionally, the Under Secretary of Defense for Acquisition, Technology, and Logistics is the decision authority.

system development and demonstration phase. For the low-rate initial production option, there was also a 3-percent base award fee (\$7.6 million) and a 7-percent judgmental award fee (\$17.8 million) available. In total, the BAMS contractor could receive up to \$132.4 million in award fees: \$39.7 million in base award fees regardless of their performance and up to \$92.7 million² in judgmental award fees based on the Government's evaluation of their performance.

Contract Award Protest

Lockheed Martin Tactical Systems filed a protest with the Government Accountability Office for the BAMS system development and demonstration contract award on May 5, 2008. The BAMS contracting officer subsequently issued a stop-work order for the contract on May 6, 2008. However, on August 8, 2008, the Government Accountability Office denied the protest, and the contracting officer restarted the work on the contract on August 11, 2008.

Contracting Officers

The BAMS program had three contracting officers, one from June 2007 to June 2008, which included contract award. The second contracting officer was responsible for the contract from June 2008 to October 2008, which included the work stoppage. The current contracting officer began work on the contract in October 2008.

Weaknesses in the Internal Controls of the BAMS Award Fee Process

DOD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DOD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses in the management and implementation of the BAMS award fee process. Specifically, the BAMS contracting officer and program officials did not justify the use of a CPAF-type contract, develop an adequate award fee plan, perform proper contractor evaluations, or justify the use of a rollover award fee period. Implementing the recommendations in this report will improve the internal controls over the BAMS award fee process. We will provide a copy of the report to the senior officials responsible for internal controls at Naval Air Systems Command.

² BAMS program officials paid approximately \$4.1 million of the \$5.4 million in estimated judgmental award fees to the contractor for the first, second, and rollover periods. In total, the BAMS contractor could potentially earn up to \$87.3 million in remaining judgmental award fees (\$92.7 million in judgmental award fees less the \$5.4 million available for the first, second, and rollover periods).

Finding. Improper Management of the Award Fee Process

The BAMS program officials did not:

- follow Federal, DOD, or Navy criteria when creating an award fee plan to administer more than \$92.7 million³ in judgmental award fees;
- implement timely award fee evaluation criteria changes or have documentation to substantiate about \$4.1 million in award fee review board determinations; or
- justify the use of an award fee rollover period⁴ to pay the contractor approximately \$1 million in rollover award fees.

Further, the BAMS contracting officer did not conduct a cost-benefit analysis to justify that a CPAF-type contract was appropriate for the BAMS program. These conditions occurred because BAMS contracting officer did not fulfill his duties, and program officials were unaware of CPAF contract criteria and did not follow the award fee plan or applicable award fee guidance. As a result, the BAMS contracting officer and fee determining official (FDO)⁵ may have erroneously paid up to \$4.1 million in judgmental award fees with another \$87.3 million in judgmental award fees at risk.

No Justification for a Cost-Plus-Award-Fee Contract

The BAMS contracting officer did not conduct a cost-benefit analysis to support that the added administrative costs required to monitor and evaluate contractor performance were justified by the expected benefits of the BAMS contract. Therefore, we question the BAMS program officials' use of a CPAF-type contract for the BAMS system development and demonstration contract. Without a cost-benefit analysis, we cannot know whether the expected benefits warranted the additional administrative burden; a different type of contract may have been more appropriate. The BAMS contracting officer stated that there was no requirement to create a written determination for the use of a CPAF-type contract at the time of the BAMS contract award. However, before the BAMS contract award date of April 22, 2008, Federal and DOD guidance existed that required justification for using a CPAF-type contract. FAR Subpart 16.4, "Incentive Contracts," June 14, 2007, states that a CPAF-type contract is an incentive contract that provides motivation for excellence. FAR subpart 16.4 also states that a CPAF-type contract must not be awarded unless the contract amount, performance period, and expected benefits are sufficient to warrant the additional administrative effort required. The Department of Navy, "Navy/Marine Corps Award Fee Guide," July 2004, (Navy

³ The total award fees available is \$132.4 million (\$92.7 million in judgmental award fees and \$39.7 million in nondiscretionary base award fees).

⁴ The Navy Award Fee Guide defines rollover as the process of moving unearned available award fees from one evaluation period to a subsequent evaluation period, thus allowing the contractor an additional opportunity to receive the previously unearned award fee.

⁵ The BAMS FDO is also the BAMS program manager.

Award Fee Guide) states that the contracting officer should justify the use of a CPAF-type contract and make a determination. The determination should be included in the official contracting file and state whether the additional administrative efforts required to monitor and evaluate the contractor's performance is less than the expected benefit of using a CPAF-type contract.

Office of Management and Budget, Office of Federal Procurement and Policy memorandum, "Appropriate Use of Incentive Contracts," December 4, 2007, (2007 OMB memorandum) states that contracting officers should conduct a written risk and cost-benefit analysis before using an incentive-fee contract. The 2007 OMB memorandum further requires the cost-benefit analysis to be approved at a level above the contracting officer.

The contracting officer provided an April 18, 2008 USD(AT&L) memorandum that approved the use of a cost-type contract for the BAMS development contract; however, the memorandum did not require a specific type of cost contract such as a CPAF. The FAR provides for several cost-type contracts such as cost-plus-fixed-fee, cost-plus-incentive-fee, cost-sharing, and CPAF. The BAMS acquisition strategy, January 25, 2007, stated only that program officials intended to use a cost contract for the BAMS system development and demonstration contract. The acquisition strategy did not include any justification or further explanation of the program officials' rationale or determination. Although the USD(AT&L) approved the BAMS program officials' plan to use a CPAF contract, neither his approval memorandum nor the acquisition strategy provided a cost-benefit analysis or justification showing that the added administrative burdens of a CPAF-type contract were less than the expected benefit. Since there is no justification, we question the BAMS program officials use of a CPAF-type contract for the BAMS system development and demonstration.

Additionally, the USD(AT&L) BAMS approval memorandum did not exempt the BAMS contracting officer from the FAR requirements for CPAF-type contracts or provide a

BAMS program officials had no assurance that a CPAF-type contract was appropriate.

waiver. Since the contract award, the BAMS program officials did not provide the administrative support required to monitor and evaluate contractor performance for judgmental award fees.⁶ This oversight was essential because the performance monitor personnel's input provided the foundation for judgmental award fee determinations. BAMS program officials had no assurance that a CPAF-type contract was appropriate.

The BAMS contracting officer should conduct a cost-benefit analysis to determine whether the administrative burden outweighs the advantages of this type of contract. Table 1 shows the available award fees and the payments made by period and amount.

⁶ The administration and contract management for the BAMS system development and demonstration contract will be addressed in another report on the BAMS program.

Table 1. BAMS Award Fee Available and Earned by Period

Award Fee Period	Fiscal Year	Award Fee Available	Award Fee Earned
1	2008-2009	\$ 2,279,332	\$ 891,763
Rollover	2009-2010	1,040,677 ¹	1,040,677
2	2009	3,156,787	2,185,602
3	2010	8,301,232	
4	2011	10,205,629	
5	2012	12,553,621	
6	2013	12,497,131	
7	2014	13,234,833	
8	2015	12,720,145	
9 ²	2014	8,876,783	
10 ²	2015	8,876,783	
Subtotal		\$ 92,702,275³	\$4,118,042
Base fee	2008-2015	39,729,548 ⁴	⁵
Total		\$132,431,823	\$4,118,042

¹ The rollover award fee was not added to the award fee available total because it was included in the unearned award fee from the first award fee period.

² These are option periods.

³ The total available judgmental award fee remaining is \$87,266,156, which is the total award fee available for the remaining seven periods (periods three through ten).

⁴ The base award fee is the nondiscretionary portion of the BAMS award fee.

⁵ We were unable to determine the amount of the base award fee that the contractor has earned.

Improper Award Fee Plan

Although the BAMS award fee review board modified the award fee plan twice, the plan still did not comply with Federal, DOD, or Navy requirements. Specifically, the plan did not include clear evaluation criteria or provide the contractors timely feedback on their performance. Additionally, the BAMS program officials should not have included performance monitor personnel on the award fee review board and did not prohibit contractor personnel from serving on the award fee review board.

Unclear Evaluation Criteria

According to BAMS program officials, they used subjective award fee evaluation criteria to evaluate the contractor's performance. The Navy Award Fee Guide states that the award fee plan should use objective award fee criteria to the maximum extent possible to support the evaluation of the contractor's performance. An April 24, 2007, USD(AT&L) memorandum, "Proper Use of Award Fee Contracts and Award Fee Provisions," (2007 USD[AT&L] memorandum) states that it is DOD's policy that objective award fee

criteria be used to measure contract performance, whenever possible. The 2007 USD(AT&L) memorandum also states that if objective criteria do not exist and it is still appropriate to use a CPAF-type contract, then the head of contracting must sign a determination and finding approving a CPAF contract. However, BAMS program officials did not obtain approval to use subjective award fee evaluation criteria from their head of contracting.

The award fee plan's evaluation criteria were unclear on how the contractor can perform "mostly above" contract standards and did not explicitly state how the contractor can achieve each rating. The award fee plan provided only broad, generic descriptions that made it impossible to develop anything other than subjective ratings. For example, the range for "very good" performance is from 50 to 89 percent, which is a wide range with no differentiation in contractor performance. The use of a rating factor such as "very good" with a generic description of performance does not establish an appropriate framework for determining meaningful ratings. It seems implausible that a contractor could receive only 50 percent of the award fee pool and yet still be considered to be doing a very good job. Table 2 shows the award fee projections using the remaining judgmental award fee available, \$87.3 million. For example, the BAMS contractor is able to earn between \$43.6 million and \$77.7 million for "very good" work. This is a range of \$34.0 million for performance within the same rating category. The wide range of fees (50 to 89 percent) that could be awarded for the "very good" category illustrates the need for specific, differentiating evaluation criteria and metrics to justify award amounts.

Table 2. Award Fee Projections

Rating	Award Fee Percentage Range	Potential Dollar Value	Range of Available Earnings for Rating
Excellent	100	\$87,266,156	\$ 8,726,616
	90	78,539,540	
Very Good	89	77,666,879	34,033,801
	50	43,633,078	
Satisfactory	49	42,760,416	41,887,754
	1	872,662	
Unsatisfactory	0	0	NA

The 2007 USD(AT&L) memorandum provides the award fee rating scale. This memorandum states that a rating of "good" will earn 50 to 75 percent of the award fee pool, a rating of "excellent" will earn 75 to 90 percent of the award fee pool, and "outstanding" will earn 90 to 100 percent of the award fee pool. The BAMS award fee plan only includes two ratings above satisfactory, whereas the 2007 USD(AT&L) memorandum includes three ratings. Therefore, the BAMS program officials should adjust the judgmental award fee ranges and implement the 2007 USD(AT&L) memorandum.

According to the 2007 OMB memorandum, award fee evaluation plans should clearly distinguish between satisfactory and excellent performance. The 2007 OMB memorandum also requires that the award fee plan clearly describe what a contractor needs to do to be considered successful. Although the BAMS award fee plans provided grading criteria, it was difficult to determine the extent to which the contractor must perform to earn each rating. Table 3 includes the award fee plan grading criteria.

Table 3. Award Fee Plan Grading Criteria

Rating	Award Fee Percent	Award Fee Plan Description
Excellent	90-100	Contractor's performance of virtually all contract requirements is consistently noteworthy and provides numerous significant, tangible or intangible, benefits to the Government. Although some areas may require improvement, these areas are minor and are more than offset by better performance in other areas. The few areas for improvement are all minor. There are no recurring problems. Contractor's management initiates effective corrective action whenever needed. In virtually all cases, contractor demonstrated reasonable and cooperative behavior with respect to total program management. Cost performance index (CPI), schedule performance index (SPI) >1.0
Very Good	50-89	Contractor's performance of most contract requirements is consistently above standards and provides significant tangible and intangible benefits to the Government. The few areas for improvement are all minor. Few, if any, recurring problems have been noted, and contractor takes satisfactory corrective action. In most cases, contractor demonstrated reasonable and cooperative behavior with respect to total program management. $1.0 \geq \text{CPI}$, $\text{SPI} > 0.98$.
Satisfactory	1-49	Contractor's performance of most contract requirements is adequate with some tangible benefits to the Government due to contractor's effort or initiative. Although there are areas of good or better performance, these are more or less offset by lower-rated performance in other areas. $0.98 \geq \text{CPI}$, $\text{SPI} \geq 0.95$
Unsatisfactory	0	Contractor's performance of most contract requirements is inadequate and inconsistent. Quality, responsiveness, and timeliness require attention and action. Corrective actions have not been taken or are ineffective. Contractor failed to demonstrate reasonable and cooperative behavior with respect to total program management. Unsatisfactory performance shall not earn an award fee. CPI , $\text{SPI} < 0.95$.

During the first award fee period, the contractor delivered contract data requirement lists on time 91 percent of the time. The grading criteria stated that contract data requirements lists and program Government data requirements were delivered in compliance with the contract. For this period, the contractor earned a “satisfactory” rating. The award fee grading criteria were unclear because the award fee plan did not provide metrics for acceptable levels of delivering contract data requirement lists on time.

Clear, objective grading criteria are needed to determine exactly what the contractor needs to do to earn each rating. The BAMS contracting officer and program officials should develop clear and objective award fee criteria to clarify their expectations of the contractor. If objective criteria do not exist, then officials should justify the use of subjective award fee grading criteria as required by the 2007 USD(AT&L) memorandum.

Failed to Provide Timely Feedback

BAMS program officials did not provide the contractors timely feedback on their performance. The Navy Award Fee Guide states that when an award fee evaluation period exceeds 6 months, officials should consider an interim evaluation to maintain effective communication with the contractor. The guide also states that a written interim evaluation provides the contractor with areas where corrective action can be taken before the award fee determination.

For example, BAMS program officials did not issue an interim evaluation of the

They [BAMS program officials] provided the interim assessment 8 days before the end of the period.

contractor’s performance for the first period, which lasted about 11 months.⁷ For the second period, they provided the interim assessment 8 days before the end of the period. This did not provide the contractor enough time to fix deficiencies in contract

performance. BAMS program officials should update the award fee plan and include definitive timeframes when the assessment will be provided in accordance with the Navy Award Fee Guide.

Additionally, the BAMS contracting officer and the FDO did not provide evaluations of the first and second award fee periods in a timely manner. The BAMS award fee plan required that the contracting officer provide the FDO letter within 75 days of the end of the award fee period. The Navy Award Fee Guide requires that the contracting officer send the FDO letter with the results of the award fee period evaluation to the contractor within 45 days of the end of the period. However, the BAMS contracting officer did not meet either criteria and issued the FDO letters to the contractor 90 days and 77 days after the end of the first and second award fee periods, respectively.

⁷ Due to the contract award protest and stop-work order, the contractor did not perform work from May 6, 2008 to August 11, 2008 .

The BAMS contracting officer and the FDO should provide the contractor with the evaluations for each period in accordance with the updated award fee plan and the Navy Award Fee Guide. This should facilitate performance oversight for the evaluation period because the Government would have provided guidance on the contractor's performance and identified areas for improvement before the end of the period.

Prohibited Members on the Award Fee Review Board

BAMS program officials incorrectly included performance monitor and contractor personnel on the award fee review board. Performance monitor personnel provide daily evaluation of the contractor's performance in specifically assigned areas of responsibility and should maintain written records of contractor performance. These written records are critical to the award fee review board in assessing the contractors overall performance. Contractor personnel should not be present during discussions or during presentations made by performance monitor personnel.

Performance Monitor Personnel Improperly Participated on the Award Fee Review Board

The Navy Award Fee Guide states that performance monitor personnel should not be members of the award fee review board. The Navy Award Fee Guide further states that it is critical that the award fee review board evaluate the contractor's overall performance. During the December 7, 2009, award fee review board meeting, we found that six of the eight performance monitor personnel participated in the board's discussions and voted on the contractor's rating for the second period. Consequently, the award fee review board may have had voting members that were aware of only their own respective areas and not the contractor's overall performance. This process potentially jeopardized the validity of awarding about \$2.2 million in judgmental award fees for the second period.

Having the performance monitor personnel vote was not in compliance with the Navy Award Fee Guide. It also may have caused a potential conflict of interest and separation of duties issues because performance monitor personnel might not consider the entire program. BAMS program officials should establish an award fee review board that complies with the Navy Award Fee Guide and does not include performance monitor personnel. Further, the award fee review board chairperson should prohibit performance monitor personnel from being present during rating and judgmental award fee determination discussions.

Contractor Personnel Erroneously Included on the Award Fee Review Board

The award fee review board should consist only of Government personnel. Contractor personnel should not be present during discussions or during presentations made by performance monitor personnel. However, the BAMS program officials included a support contractor on the award fee review board who was also present during the judgmental award fee determination and performance discussions. The contractor was part of the support staff for the BAMS Program Office and functioned as the recorder for the board.

A BAMS program official stated that the support contractor was being hired by the program office as a Government employee. Nonetheless, both the Navy Award Fee Guide and the BAMS award fee plan clearly state that no contractor personnel are allowed to attend or participate in the award fee review board. BAMS program officials should prohibit contractor personnel from attending or participating in the award fee review board.

Weaknesses in the Award Fee Process

The BAMS contracting officer and program officials made untimely changes to award fee performance criteria and did not require performance monitor personnel to document their evaluation of contractor performance. Because of this, the BAMS award fee review board did not have the proper controls to assess contractor performance and provide a fair award fee determination for approximately \$4.1 million⁸ in judgmental award fees that they have awarded to the contractor or the remaining \$87.3 million in potential judgmental award fees.

Award Fee Criteria Changed After the Period Ended

BAMS program officials did not properly implement changes in award fee criteria. According to the BAMS award fee plan, changes to the award fee criteria must be made 30 days prior to the start of the evaluation period or by mutual agreement between the Government and the contractor during the period. Additionally, the Navy Award Fee Guide provides a sample award fee plan, which specifically states that if the contracting officer does not issue award fee criteria for a new period, then the old award fee criteria applies.

BAMS program officials changed the first period award fee criteria approximately 6 months after the award fee evaluation period ended. A BAMS program official stated that this occurred because of the stop-work order issued by the BAMS contracting officer. The official further stated that the first award fee period was from April 22, 2008, to September 30, 2008; however, BAMS program officials and the contractor were in award fee negotiations until 6 months after the period ended because they were unable to agree on the contractor performance criteria for the new periods.

As a result, BAMS program officials evaluated the contractor on criteria that were not on the contract until after the award fee period ended. The contractor may not have received a proper judgmental award fee determination because the performance criteria was not established until after the end of the award fee period. BAMS award fee review board officials should issue new award fee performance criteria, and any changes to the criteria should be in accordance with the updated award fee plan so that the contractor is aware of the award fee criteria before the start of the performance period.

⁸ The contractor earned \$4.1 million of a possible \$5.4 million in judgmental award fees for the first, second, and rollover periods.

Contractor Performance Not Documented

The BAMS FDO and award fee review board did not properly document that they monitored the contractor's performance. None of the eight BAMS performance monitor personnel maintained their own records of contractor performance. In fact, the BAMS FDO and the award fee review board sometimes relied on the contractor to assess its own work.

The BAMS award fee plan followed the Navy Award Fee Guide by requiring that performance monitor personnel maintain written records of the contractor's performance

None of the eight BAMS performance monitor personnel maintained their own records of contractor performance.

for their assigned evaluation areas. The plan further required that performance monitor personnel detail specific examples of where improvements were necessary or had occurred, and when performance was below, at, or exceeded contractual requirements. However, none of the performance monitor personnel could provide written evidence of surveillance. When asked about their records, one performance monitor stated that he did not have written records of contractor performance, and another performance monitor explained that he relied on contractor-created documents to evaluate the contractor's performance. The performance monitor further stated that he reviewed contractor performance reports and the master schedule to assess contractor performance. Both of these documents were contractor-created deliverables. The performance monitor did not keep individual written determinations of contractor performance to verify the accuracy of the contractor deliverables and document contractor performance.

According to the BAMS award fee plan and the Navy Award Fee Guide, performance monitor personnel were required to document the contractor evaluations for each evaluation period to provide transparency and facilitate a sound award fee process. Because the performance monitor personnel did not document their evaluations, the BAMS FDO and the award fee review board paid approximately \$4.1 million in judgmental award fees to the contractor without evidence to support their decision. BAMS program officials should hold the performance monitor personnel accountable for keeping written records of contractor performance. Program officials should also require the performance monitor personnel to document the contractor's lack of performance if they fail to comply with requirements.

Improper Rollover Award Fee Period

BAMS program officials and the BAMS contracting officer did not comply with rollover award fee criteria. The BAMS FDO improperly awarded the contractor more than \$1 million in rollover award fees and did not justify the use of the rollover fees on the BAMS contract.

No Justification of Rollover Period

No BAMS program official approved the rollover award fee period. The Navy Award Fee Guide defines “rollover” as the process of moving available unearned judgmental award fees from one evaluation period to a subsequent evaluation period, thereby allowing the contractor an additional opportunity to receive previously unearned judgmental award fee. According to a March 29, 2006, USD(AT&L) memorandum, “Award Fee Contracts (FAR 16, DFARS 215, DFARS 216),” (2006 USD[AT&L] memorandum), if the FDO approves the use of a rollover award fee, the official contract file must contain documentation on why the use of this fee is appropriate, and the contracting officer must inform the contractor. The 2006 USD(AT&L) memorandum also requires that if officials plan to use a rollover award fee, they must document the use of a rollover fee in the program acquisition strategy. However, BAMS program officials did not include in the acquisition strategy that they intended to use a rollover award fee or justify the rationale as to why the rollover was appropriate.

Improperly Awarded \$1 million in Rollover Award Fees

The BAMS contracting officer and the FDO improperly awarded the fees for the rollover period. According to the 2006 USD(AT&L) memorandum, the contractor may earn only a portion of the fee that was unearned in a previous award fee period, even if the contractor’s performance was excellent. The BAMS contractor earned 100 percent of the available award fee in contradiction to the 2006 USD(AT&L) memorandum. The FDO improperly awarded the contractor the entire rollover award fee amount of \$1,040,677. The BAMS contracting officer should review the rollover fee payment to determine what an appropriate fee should have been and recoup any overpayment to the contractor for the rollover period.

Summary

The BAMS contracting officer did not justify the use of a CPAF-type contract for the BAMS system development and demonstration contract. Additionally, BAMS program officials did not create a proper award fee plan in accordance with Federal, DOD, and Navy policies nor did they follow the BAMS contract award fee plan. BAMS program officials also did not justify the use of approximately \$1 million in rollover award fees. As a result, BAMS program officials did not have the proper foundation to assess contractor performance to award \$4.1 million in fair judgmental award fees to the contractor, or the remaining \$87.3 million in potential judgmental award fees.

Management Comments on the Finding and Our Response

The Assistant Secretary of the Navy for Research, Development, and Acquisition responded on behalf of the Navy with specific comments for each recommendation provided by the Program Executive Officer, Unmanned Aviation and Strike Weapons (Program Executive Officer); and the Assistant Commander for Contracts, Naval Air Systems Command (Assistant Commander for Contracts).

Program Executive Officer and the Assistant Commander for Contracts Comments on the Finding

Though not required to comment on the narrative of the finding, the Program Executive Officer and the Assistant Commander for Contracts partially agreed with sections of the report. Navy officials stated that BAMS program officials and Navy Air Systems Command legal officials used the Navy Award Fee Guide as an overarching guide in establishing the BAMS award fee plan. Navy officials disagreed with the report sections that discussed the contractor serving on the award fee review board and the performance monitors not documenting contractor performance or maintaining independent records. However, they agreed to exclude performance monitors as voting members of the award fee review board.

Additionally, the Program Executive Officer and the Assistant Commander for Contracts partially agreed with the internal controls section of the report. They stated that the appropriate justification existed for a BAMS cost-plus-award-fee contract and that the award fee plan was adequate. However, Navy officials stated that the BAMS contracting officer and award fee review board will modify the BAMS award fee plan to address timeliness of assessments and associated contract modifications. Navy officials also stated that they will review and approve the justification for the use of future rollover award fee periods in the BAMS contracting file.

Our Response

Navy officials did not always follow the Navy Award Fee Guide when creating the BAMS award fee plan. For example, the BAMS award fee plan did not provide objective evaluation criteria or clear rating criteria, did not require timely feedback, and included prohibited members on the award fee review board.

BAMS program officials did not always comply with the BAMS award fee plan. According to the BAMS award fee plan, the board should be composed of only Government personnel, regardless of their role, and should not include prime contractor personnel. The plan also required that performance monitors maintain written records that detail specific examples of contractor performance. However, during the audit, BAMS program officials allowed an office support staff contractor to serve on the award fee review board, and none of the eight performance monitors maintained written records of the contractor's performance.

Navy officials could not provide a cost-benefit analysis for the BAMS contract supporting the use of a cost-plus-award-fee contract as required by the 2007 OMB memorandum and FAR part 16.4. According to the 2007 OMB memorandum, contracting officers should conduct a written risk and cost-benefit analysis before using an incentive-fee contract, which should be approved at a level above the contracting officer. FAR part 16.4 also requires that the contracting officer justify the use of a cost-plus-award-fee contract to demonstrate that the additional administrative costs of evaluations outweigh the expected benefits.

Recommendations, Management Comments, and Our Response

The Assistant Secretary of the Navy for Research, Development, and Acquisition, responded on behalf of the Navy with specific comments for each recommendation provided by the Program Executive Officer and the Assistant Commander for Contracts.

Renumbered Recommendations

To clarify the intent of our recommendations we moved draft Recommendations 1.b.(2)(c), 1.b.(2)(d), 1.b.(2)(f), and 1.b.(2)(g) under recommendation 1.b.3. Specifically, we renumbered draft report Recommendation 1.b.(2)(c) to final report Recommendation 1.b.(3)(b), draft report Recommendation 1.b.(2)(d) to final report Recommendation 1.b.(3)(c), draft report Recommendation 1.b.(2)(f) to final report Recommendation 1.b.(3)(a), draft report Recommendation 1.b.(2)(g) to final report Recommendation 1.b.(3)(d), draft report Recommendation 1.b.(2)(h) to final report Recommendation 1.b.(2)(c), and draft report Recommendation 1.b.(2)(i) to final report Recommendation 1.b.(2)(d).

1. We recommend that the Program Executive Officer, Unmanned Aviation and Strike Weapons, require that the:

a. Broad Area Maritime Surveillance program officials establish objective award fee performance criteria as required by the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, “Proper Use of Award Fee Contracts and Award Fee Provisions,” April 24, 2007.

Program Executive Officer Comments

The Program Executive Officer disagreed. He stated that the April 2007 USD(AT&L) memorandum did not apply to the BAMS solicitation because it was issued February 15, 2007, and the effective date of the memorandum was for solicitations issued after August 1, 2007.

Additionally, the Program Executive Officer stated that BAMS program officials created four performance evaluation criteria: cost, technical, schedule, and management. He explained that these evaluation factors are “objective like” and will incentivize and motivate the contractor to perform beyond the minimum contract requirements throughout the system design and development phase. He stated that the criteria were also weighted in accordance with critical program milestones as well as program outcome, phase, and risk. Lastly, the Program Executive Officer stated that Naval Air Systems Command officials approved the BAMS contract incentive strategy.

Our Response

The Program Executive Officer’s comments are not responsive. Although the BAMS contracting officer issued the initial solicitation on February 15, 2007, the contracting officer modified the solicitation seven times after August 1, 2007, and issued the final amendment to the solicitation on January 16, 2008 (amendment 17). Therefore, BAMS

program officials had about 6 months after the effective date of the April 2007 USD(AT&L) memorandum to incorporate the requirements and establish objective criteria into the award fee plan. Furthermore, a BAMS program management official provided us with the April 2007 USD(AT&L) memorandum and stated that it was criteria that the BAMS program followed and implemented into the award fee plan.

In addition, the BAMS award fee plan used subjective criteria. The Program Executive Officer stated that the BAMS award fee plan had “objective like” criteria, but did not explain how the criteria was “objective like.” For example, the Program Executive Officer did not define the vague evaluation criteria that BAMS program officials would use to measure the contractor’s performance. Without clear and defined objective evaluation criteria, assessing the contractor’s performance becomes open for subjective interpretation. BAMS program officials should implement the requirements of the April 2007 USD(AT&L) memorandum as a good business practice and to assist in improving the way DOD does business, even though they did not follow the memorandum when creating the BAMS award fee plan.

The Program Executive Officer’s comments on the applicability of the April 2007 USD(AT&L) memorandum contradicts information that was provided to us by a BAMS program official. Therefore, we request that the Program Executive Officer reconsider his position and provide revised comments for the final report.

b. Broad Area Maritime Surveillance fee determining official establish an award fee review board that complies with the Department of Navy, “Navy/Marine Corps Award Fee Guide,” July 2004. The Broad Area Maritime Surveillance fee determining official and the award fee review board members should:

(1) Develop clear and objective grading criteria to clarify their expectations and incentivize the contractor by explaining to what extent the contractor needs to perform to earn each rating in the award fee plan.

Program Executive Officer Comments

The Program Executive Officer disagreed. He stated that the BAMS award fee plan provides award fee grade definitions and evaluation criteria based on objectives associated with the effective application of the performance measurement baseline and major program events in each award fee evaluation period. The Program Executive Officer also stated that the BAMS award fee plan considers subjective criteria and objective evaluation criteria such as the cost performance and schedule performance indices. Additionally, he noted that the BAMS award fee plan includes four criteria for evaluation (cost, technical, schedule, and performance) and that each contain two to three quantitative and qualitative measurements.

Our Response

The Program Executive Officer’s comments are not responsive. Specifically, the Program Executive Officer’s response did not state how the evaluation criteria were objective or provide specific metrics. He stated only that the performance evaluation criteria were

“objective like.” The evaluation criteria specified in the BAMS award fee plan were mostly subjective. For example, under the cost evaluation criteria, one of the objectives was to evaluate the “degree to which program funds and resources were used to provide the maximum benefit for the program.” The BAMS FDO stated during the audit that determining the “maximum benefit” is vague and subjective. Without defining vague terms in the BAMS award fee plan such as “maximum benefit,” “consistently above standards,” or “adequate,” the award fee evaluation board will not be able to consistently apply the award fee evaluation criteria when assessing the contractor’s performance.

Additionally, while the BAMS award fee plan included two to three quantitative and qualitative measurements for each rating criteria, the quantitative measurements were the cost and schedule performance indices that the BAMS FDO stated that he did not fully rely on because “the contractor can game the numbers,” and the qualitative measurements included vague terms such as “adequate” and “maximum benefit” that are not defined. Therefore, we request that the Program Executive Officer reconsider his position and provide revised comments to the final report.

(2) Revise and reissue the Broad Area Maritime Surveillance award fee plan to:

(a) Include acceptable timeframes for providing the results of the interim award fee evaluation to the contractor in accordance with the Department of the Navy, “Navy/Marine Corps Award Fee Guide,” July 2004.

Program Executive Officer Comments

The Program Executive Officer disagreed. He stated that the BAMS award fee plan provides interim award fee evaluation criteria and the timeframe that the BAMS award fee review board is required to comment on the interim evaluation period. He also stated that BAMS program officials provide the contractor evaluation criteria at the start of a new evaluation period, which are in effect for the entire award fee period. Additionally, the Program Executive Officer explained that the Navy Award Fee Guide does not provide specific timeframes for providing contractors the results of the interim award fee evaluation. However, he said that BAMS program officials try to provide the contractor the results of the interim award fee assessment 30 days after the end of the interim award fee period.

Our Response

The Program Executive Officer’s comments are not responsive. Although the BAMS award fee plan provided criteria for the interim award fee period, the plan did not include a timeframe in which BAMS program officials will provide interim feedback to the contractor. Additionally, the Program Executive Officer did not state whether he will amend the BAMS award fee evaluation plan to include a timeframe to provide the BAMS contractor interim award fee evaluation results.

According to the Navy Award Fee Guide, a written interim evaluation provides the contractor with areas where corrective action can be taken before the award fee determination.

Establishing a timeframe to provide interim award fee evaluation feedback to the contractor provides:

- increased transparency for all award fee participants,
- incentives for the contractors to take corrective actions to improve their performance, and
- effective communication.

Therefore, we request that the Program Executive Officer reconsider his position and provided revised comments to the final report.

(b) Provide the contractor more timely feedback at the end of the award fee evaluation period in accordance with the Department of the Navy, “Navy/Marine Corps Award Fee Guide,” July 2004.

Program Executive Officer Comments

The Program Executive Officer agreed. He stated that BAMS program officials will modify the award fee plan to provide the BAMS contractor the overall grade and award fee payment within 45 days of the completion of each award fee evaluation period.

Our Response

The Program Executive Officer’s comments are responsive. The Program Executive Officer’s comments indicated that he will take appropriate actions. While no additional comments are required, we request that the Program Executive Officer provide the modified BAMS award fee plan and a copy of the contract modification that includes the evaluation for the fourth BAMS award fee period to our office.

(c) Prohibit performance monitor personnel from being present during the award fee review board rating and fee determination discussions.

Program Executive Officer Comments

The Program Executive Officer agreed. He stated that the BAMS award fee plan will be updated to exclude performance monitors from being present during award fee review board rating and fee determination discussions.

Our Response

The Program Executive Officer’s comments are responsive, and no further comments are required.

(d) Exclude performance monitor personnel from being award fee review board members.

Program Executive Officer Comments

The Program Executive Officer agreed. He stated that the BAMS award fee plan will be updated to exclude performance monitors from the award fee review board.

Our Response

The Program Executive Officers' comments are responsive, and no further comments are required.

(e) Provide the contractor an interim award fee evaluation for every award fee period longer than 6 months in accordance with the Broad Area Maritime Surveillance award fee plan.

Program Executive Officer Comments

The Program Executive Officer stated that he partially agreed, but his response did not indicate what he actually agreed with. Specifically, the Program Executive Officer stated that BAMS program officials were late in providing interim award fee evaluations for the first award fee period, and that BAMS program officials did not plan for award fee periods of longer than 12 months. He explained that due to the contract award protest, the interim award fee evaluations for the first two periods took longer than 6 months. The Program Executive Officer said this contributed to BAMS program officials not providing interim award fee evaluations in a timely manner.

Our Response

Although the Program Executive Officer explained the reasons that BAMS program officials were late in providing the interim award fee evaluation for the first award fee period, he did not state whether he will change the BAMS award fee plan. We request that the Program Executive Officer require the BAMS award fee review board to provide the contractor an interim award fee evaluation for every award fee period longer than 6 months as suggested by the Navy Award Fee Guide. Providing interim feedback to the BAMS contractor will incentivize the contractor to take corrective actions to improve its performance and increase effective communication. Therefore, we request that the Program Executive Officer provide comments in response to the final report stating whether he will change the BAMS award fee plan and require interim feedback for any evaluation period that exceeds 6 months.

(3) Comply with the Broad Area Maritime Surveillance award fee plan:

(a) When making award fee evaluation determinations.

Program Executive Officer Comments

The Program Executive Officer agreed. He stated that BAMS program officials will comply with the revised award fee plan.

Our Response

The Program Executive Officer's comments are responsive, and no further comments are required.

(b) Prohibit all contractor personnel from being members of the award fee review board and participating in the award fee determination process.

Program Executive Officer Comments

The Program Executive Officer partially agreed. He stated that the intent of the Navy Award Fee Guide was to prohibit prime contractors from participating in their own award fee review board. He also stated that the BAMS award fee plan states that the award fee review board should not include prime contractor personnel. Additionally, the Program Executive Officer explained that the BAMS program support contractor served as the award fee review board recorder and signed a nondisclosure agreement to support the BAMS program office. The support contractor did not have financial interest in the outcome of the award fee decision and acted only as a note taker, not a voting member of the award fee review board. However, he agreed that it would have been preferable to use a Government employee as the award fee review board recorder, but that the integrity of the board was never an issue.

Our Response

The Program Executive Officer's comments are not responsive. Although the Program Executive Officer agreed that it would have been preferable to use a Government employee on the award fee review board, he did not state whether he will include only Government personnel on the award fee review board in the future. Therefore, we request that the Program Executive Officer provide additional comments in response to the final report that state whether he will prohibit all contractor personnel from participating in the BAMS award fee review board.

(c) Require all changes in the Broad Area Maritime Surveillance award fee plan to be provided to the contractor 30 days prior to the start of the award fee period.

Program Executive Officer Comments

The Program Executive Officer partially agreed. He stated that the BAMS program incurred a 100 day delay due to a contract award protest. The Program Executive Officer explained that after the program restarted in August 2008, the BAMS contractor and program officials negotiated award fee plan changes, and the BAMS contracting officer subsequently amended the award fee plan on March 26, 2009. He added that the revised plan changed the award fee evaluation criteria, significant events, award fee allocations, and end dates for the first and second award fee periods. He also stated that the plan changes resulted in the first and second periods being shortened to 7 and 6 months long, respectively. However, the Program Executive Officer agreed that BAMS program officials were late in providing the contractor feedback for the first evaluation period.

Our Response

The Program Executive Officer's comments are not responsive. The Program Executive Officer agreed that the BAMS program officials were late in providing the contractor feedback for the first award fee period. However, he did not state whether the BAMS program officials will provide all award fee plan changes to the contractor 30 days before the start of the award fee period as required by the BAMS award fee plan. Therefore, we request that the Program Executive Officer provide comments in response to the final report stating whether he will provide all changes to the BAMS award fee plan to the contractor at least 30 days before the start of the award fee period.

(d) Require performance monitor personnel to prepare written records of contractor performance and hold the performance monitor personnel accountable for their written documentation.

Program Executive Officer Comments

The Program Executive Officer partially agreed. He stated that the BAMS award fee plan defines the responsibilities of the members of the award fee review board and requires the performance monitor to maintain written records of contractor performance. He also stated that the BAMS program officials provided the members of the award fee review board and performance monitors training upon nomination to their roles to ensure that they understand and accept the responsibility of being a member of the award fee review board. Additionally, the Program Executive Officer explained that some of the performance monitors compare the information provided by the contractor to data produced with internal Naval Air Systems Command tools to verify the accuracy of the contractor deliverables. However, he noted that BAMS program officials will include the performance monitors' written documentation in each evaluation period.

Our Response

The Program Executive Officer's comments are responsive, and no further comments are required.

2. We recommend that the Assistant Commander for Contracts, Naval Air Systems Command, instruct the Broad Area Maritime Surveillance contracting officer to:

a. Conduct a cost-benefit analysis to determine whether a cost-plus-award-fee contract is appropriate for the Broad Area Maritime Surveillance program and include the analysis with the determination in the contract file.

Assistant Commander for Contracts Comments

The Assistant Commander for Contracts disagreed. She stated that the BAMS contracting officer conducted the appropriate analysis and justified using a cost-plus-award-fee contract. The Assistant Commander for Contracts also stated that the BAMS program officials provided two presentations to the head of contracts, Naval Air Systems

Command, and the Program Executive Officer, Unmanned and Strike Weapons, on the BAMS contract before the contract award.

Additionally, the Assistant Commander for Contracts stated that the BAMS contracting officer documented the cost-plus-award-fee rational in the business clearance memorandum, which stated that “any additional administrative effort and cost required to monitor and evaluate performance is justified by the expected benefits.” She further stated that the BAMS contractor is currently meeting its contract requirements, but that if its performance should decline, then BAMS program officials will re-examine the use of a cost-plus-award-fee contract.

Our Response

The Assistant Commander for Contracts comments are not responsive. Although BAMS program officials may have briefed their intent to use a cost-plus-award-fee contract, they did not justify the use of a cost-plus-award-fee contract. FAR part 16.4 states that the contracting officer must justify that the contract amount, performance period, and expected benefits of a cost-plus-award-fee contract are sufficient to warrant the additional administrative effort and costs involved. According to the 2007 OMB memorandum, contracting officers should conduct a written risk and cost-benefit analysis before using an incentive-fee contract, which should be approved at a level above the contracting officer. However, the BAMS contracting officer did not provide a cost-benefit analysis supporting the statement in the business clearance memorandum. Therefore, BAMS program officials have no assurance that the benefits of the cost-plus-award-fee contract outweigh the increased administrative costs of evaluation or that a cost-plus-award-fee contract is appropriate for the BAMS system development and demonstration contract. We request that the Assistant Commander for Contracts provide comments in response to the final report stating whether she will require the contracting officer to perform a cost-benefit analysis for the BAMS contract as required by the 2007 OMB memorandum and FAR part 16.4.

b. Comply with the award fee criteria from the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, “Proper Use of Award Fee contracts and Award Fee Provisions,” April 24, 2007.

Assistant Commander for Contracts Comments

The Assistant Commander for Contracts disagreed. She stated that the BAMS contracting officer issued the solicitation on February 15, 2007, and at the time, it conformed to existing award fee criteria. She also stated that the April 2007 USD(AT&L) memorandum was effective for solicitations issued after August 1, 2007, and therefore; it did not apply to the BAMS contract.

Our Response

The Assistant Commander for Contracts comments are not responsive. The BAMS contracting officer had approximately 6 months after the effective date of the April 2007 USD(AT&L) memorandum to incorporate the requirements and establish objective award fee criteria given the numerous amendments to the solicitation after the effective

date of the USD(AT&L) memorandum. Additionally, during our site visit, a BAMS program official provided us the April 2007 USD(AT&L) memorandum and stated that the BAMS award fee plan complied with the memorandum. However, BAMS program officials did not comply with the April 2007 USD(AT&L) memorandum even though they provided the memorandum and stated that they complied with it.

BAMS program officials should incorporate the requirements of the April 2007 USD(AT&L) memorandum into the award fee plan because it will increase the transparency of the award fee process as well as clarify the award fee evaluation criteria. Therefore, the Assistant Commander for Contracts should provide comments in response to the final report stating why she did not comply with the April 2007 USD(AT&L) memorandum even though the requirements would improve the award fee process and she had approximately 6 months to implement the memorandum.

c. Review the rollover award fee payment to determine an appropriate amount in accordance with the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, “Award Fee Contracts (FAR 16, DFARS 215, DFARS 216),” March 29, 2006.

Assistant Commander for Contracts Comments

The Assistant Commander for Contracts partially agreed. She stated that the BAMS FDO’s actions were in accordance with the March 2006 USD(AT&L) memorandum. The Assistant Commander for Contracts explained that the FDO complied with the memorandum because the FDO made only 75 percent (\$1,040,677) of the unpaid award fee available (\$1,387,569) for the rollover award fee period. She also stated that by excluding 25 percent of the unpaid available award fee, the BAMS contracting officer “put the contractor on notice” that the most it could recover was 75 percent of the total unearned fee.

Additionally, the Assistant Commander for Contracts stated that she reviewed the BAMS rollover award fee payment and concluded that the BAMS FDO acted within his authority. She explained that the contractor received 100 percent of the available rollover award fee (\$1,040,677) by obtaining an “excellent” rating in accordance with the BAMS award fee plan. The Assistant Commander for Contracts further stated that past BAMS award fee rollover actions were in accordance with the March 2006 USD(AT&L) memorandum and that Naval Air Systems Command officials will review the effectiveness of using future rollover award fees for the BAMS contract.

Our Response

The Assistant Commander for Contracts comments are not responsive. Although the BAMS contracting officer made only 75 percent of the unpaid award fee from the first award fee period available to the contractor, the BAMS FDO and contracting officer did not comply with the March 2006 USD(AT&L) memorandum. The March 2006 USD(AT&L) memorandum states that the contractor may earn only a portion of the fee that was rolled over, even if contractor performance is excellent. However, the BAMS FDO awarded the contractor an “excellent” and granted the contractor

100 percent of the award fee that was rolled over (\$1,040,677). Therefore, the BAMS FDO and contracting officer did not comply with the March 2006 USD(AT&L) memorandum because they awarded the BAMS contractor 100 percent of the rollover award fee available. We request that the Assistant Commander for Contracts review the BAMS rollover award fee payment to determine an acceptable amount that is less than 100 percent of the available award fee the contractor can receive in accordance with the March 2006 USD(AT&L) memorandum and provide comments in response to the final report.

d. Recoup any overpayment to the contractor for the rollover period based on the revised determination.

Assistant Commander for Contracts Comments

The Assistant Commander for Contracts disagreed. She stated that the execution of the rollover award fee period met the intent of the 2006 USD(AT&L) memorandum, and the BAMS FDO did not overpay the BAMS contractor.

Our Response

The Assistant Commander for Contracts comments are not responsive. The BAMS FDO and contracting officer did not comply with the March 2006 USD(AT&L) memorandum because they awarded the entire rollover award fee available to the contractor. According to the March 2006 USD(AT&L) memorandum, the contractor may only receive a portion of the award fee that was rolled over even if its performance was excellent. Therefore, we request that the Assistant Commander for Contracts instruct the BAMS contracting officer to recoup the overpayment or reduce future award fee payments in order to comply with the March 2006 USD(AT&L) memorandum and provide comments in response to the final report.

Appendix. Scope and Methodology

We conducted this performance audit from July 2009 through June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We interviewed BAMS contracting officers and program officials at Patuxent River, Naval Air Station, Patuxent River, Maryland, as well as Defense Contract Management Agency officials at Bethpage, New York, who were involved in the BAMS award fee process. We also attended an award fee review board meeting for the second award fee evaluation period.

To review the BAMS award fee process, we reviewed the original contracting files, contract modifications, award fee plans, and the FDO's letters. We then compared those documents to the FAR, Defense Federal Acquisition Regulation Supplement, a 2007 Office of Management and Budget memorandum, USD(AT&L) memoranda, and the Navy/Marine Corps Award Fee Guide to determine whether DOD officials properly followed the award fee criteria.

Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) and the DOD Inspector General (DOD IG) have issued four reports discussing DOD's use of award fee contracts. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DOD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

GAO

GAO Report No. 09-630, "Guidance on Award Fees Has Led to Better Practices But Is Not Consistently Applied," May 2009

GAO Report No. 07-839, "DOD's Lack of Adherence to Key Contracting Principles on Iraq Oil Contract Put Government Interests at Risk," July 2007

GAO Report No. 06-66, "DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes," December 2005

DOD IG

DOD IG Report No. 2010-049, "U.S. Army Corps of Engineers' Use of Award Fees on Contracts in Iraq and Afghanistan," April 1, 2010

Assistant Secretary of the Navy for Research, Development, and Acquisition Comments

Final Report
Reference



THE ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

AUG 11 2010

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR
GENERAL

SUBJECT: Response to the DoDIG Draft Report "Weaknesses in Awarding Fees for the Broad Area Maritime Surveillance Contract (Project Number D2009-D000AS-0247.001)"

References: (a) DODIG Draft Report "Weaknesses in Awarding Fees for the Broad Area Maritime Surveillance Contract"
(b) DoD Directive 5400.7-R, Freedom of Information Act Program

Attached is my response to DODIG Draft Report "Weaknesses in Awarding Fees for the Broad Area Maritime Surveillance Contract" which was forwarded for review, comments and signature. In accordance with Chapter 3, paragraph C3.2.1.2.1 of reference (b), no Freedom of Information Act (FOIA) markings are required. Please direct any questions concerning the response to [REDACTED]

A handwritten signature in black ink, appearing to read "SJS", with a long horizontal stroke extending to the right.

Sean J. Stackley

Attachment:

1. Response to Subject Draft Report

cc:

General Counsel



DEPARTMENT OF THE NAVY
PROGRAM EXECUTIVE OFFICER
UNMANNED AVIATION AND STRIKE WEAPONS
RADM WILLIAM A MOFFETT BUILDING
47123 BUSE ROAD BLDG 2272
PATUXENT RIVER, MD 20670-1547

7501
Ser PEO(U&W)/10-126
19 July 2010

From: Program Executive Officer, Unmanned Aviation & Strike Weapons (PEO(U&W))
To: Assistant Secretary of the Navy, Research, Development, and Acquisition (ASN(RDA))

Subj: DODIG DRAFT REPORT ON WEAKNESSES IN AWARDING FEES FOR THE
BROAD AREA MARITIME SURVEILLANCE CONTRACT (PROJECT NUMBER
D2009-D000AS-0247.001)

Ref: (a) E-Mail [REDACTED] dtd 06/24/10 @1255
(b) DoD Directive 5400.7-R, Freedom of Information Act Program

Encl: (1) PEO(U&W)/AIR-2.0 Response to Subject Draft Report

1. Reference (a) forwarded subject draft report for review and comments. Accordingly, enclosure (1) provides our response.
2. In accordance with Chapter 3, paragraph C3.2.1.2.1 of reference (b), no Freedom of Information Act (FOIA) markings are required.
3. Please direct questions concerning the response to [REDACTED]


W. E. SHANNON
RADM USN

Copy to:
AIR-2.0

**Program Executive Officer, Unmanned Aviation and Strike Weapons (PEO(U&W))
Naval Air Systems Command (NAVAIR)
RESPONSE TO DODIG DRAFT REPORT
Weaknesses in Awarding Fees for the Broad Area Maritime Surveillance (BAMS) Contract
Project Number D2009-D000AS-0247.001, Dated June 24, 2010**

FINDING: Improper Management of the Award Fee Process

The BAMS program officials did not:

- follow Federal, DOD, or Navy criteria when creating an award fee plan to administer more than \$92.7 million in judgmental award fees;
- implement timely award fee evaluation criteria changes or have documentation to substantiate about \$4.1 million in award fee review board determinations; or
- justify the use of an award fee rollover period to pay the contractor approximately \$1 million in rollover award fees.

Further, the BAMS contracting officer did not conduct a cost-benefit analysis to justify that a CPAF-type contract was appropriate for the BAMS program. These conditions occurred because BAMS contracting officer did not fulfill his duties, and program officials were unaware of CPAF contract criteria and did not follow the award fee plan or applicable award fee guidance. As a result, the BAMS contracting officer and fee determining official (FDO) may have erroneously paid up to \$4.1 million in judgmental award fees with another \$87.3 million in judgmental award fees at risk.

PEO(U&W) / NAVAIR Response: Partially concur. Please see the following responses to the recommendations below.

RECOMMENDATION 1: Program Executive Officer, Unmanned Aviation and Strike Weapons, require that the:

a. Broad Area Maritime Surveillance program officials establish objective award fee performance criteria as required by the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Proper Use of Award Fee Contracts and Award Fee Provisions," April 24, 2007.

RESPONSE: Do not concur. The Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (OUSD (AT&L)) Defense Procurement Acquisition Policy (DPAP) memo of April 24, 2007 states, "It is the policy of the Department that objective criteria will be utilized, whenever possible, to measure contract performance". The April 24, 2007 memo did not apply to solicitations issued before 1 August 2007. The BAMS solicitation was issued on 15 February 2007; thus, the policy does not apply. The BAMS program office in July to October 2006 time period, conducted incentive discussions with NAVAIR leadership to establish an effective award

fee plan which would include objective performance criteria whenever possible. These discussions took into account; current award fee environment, combination of base fee and award fee, four performance evaluation factors/criteria (cost, technical, schedule and management) which are variably weighted towards total program outcome, dependent on phase of program and risk, and focused on critical program milestone events. These four evaluation factors/criteria are "objective like" criteria that aim to incentivize contractor throughout the entire System Design and Development (SDD) phase. This contract incentive strategy was approved by NAVAIR leadership and resulted in the BAMS Award Fee Plan which incorporated the objective performance criteria that would motivate the contractor to deliver beyond minimum contract requirements, reward for improvement and risk mitigation and provide the government flexibility to respond to issues/risks.

b. Broad Area Maritime Surveillance fee determining official establish an award fee review board that complies with the Department of Navy, "Navy/Marine Corps Award Fee Guide," July 2004.

RESPONSE: Partially concur. The Navy/Marine Corps Award Fee Guide, July 2004, Chapter 1, paragraph 1.0 states "This guide provides guidance and a framework that should be considered and applied, as appropriate when using award fees, while leaving the Fee Determining Officer (FDO), Award Fee Review Board (AFRB) and Contracting Officer the latitude to make changes to fit the procurement." The BAMS UAS program and NAVAIR legal used the Navy/Marine Corps Award Fee Guide as its overarching rationale, as appropriate in the establishment of the BAMS UAS Award Fee Plan and the conduct of the award fee board. The BAMS UAS Program does not concur with the assertion within the report sections on prohibited members on the award fee review boards, contractor personnel erroneously included on the award fee review boards and performance monitors not documenting contractor performance or maintaining their own records. However, the BAMS UAS program will ensure that BAMS UAS Award Fee Plan performance monitors do not vote during board meetings.

b. (continued) The Broad Area Maritime Surveillance fee determining official and the award fee review board members should:

(1) Develop clear and objective grading criteria to clarify their expectation and incentivize the contractor by explaining to what extent the contractor needs to perform to earn each rating in the award fee plan.

RESPONSE: Do not concur. As stated in the Navy/Marine Corps Award Fee Guide, "Objective measurements should be utilized, to the maximum extent possible, to support the subjective evaluation of the contractor's performance." The BAMS UAS Award Fee Plan under contract stipulates in Section 8.0 Award Fee Evaluation Objectives and Annex 5, provides grade definition and evaluation criteria. The BAMS UAS Award Fee Plan states, "Award fee criteria will be based on objectives associated with major program events in each AFEP and effective application of a Performance Measurement Baseline (PMB)." The Award Fee Plan takes into consideration objective criteria such as

Schedule Performance Index and Cost Performance Index as well as subjective criteria. The Plan has established four evaluation criteria: cost, technical, schedule and management which are used to determine performance under the contract. Each of these four evaluation criteria contains two to three quantitative measurements and two to three qualitative measurements.

(2) Revise and reissue the Broad Area Maritime Surveillance award fee plan to:

(a) Include additional criteria for the interim award fee evaluation explaining acceptable timeframes for providing the contractors the results in accordance with the Department of Navy, "Navy/Marine Corps Award Fee Guide," July 2004.

RESPONSE: Do not concur. The BAMS UAS Award Fee Plan contains "Section 4.0 Award Fee Processes, paragraph b. Interim Evaluation Process" that currently addresses interim award fee evaluation and the timeframe in which contractor is provided the interim evaluation at the midpoint of the evaluation period. Per the BAMS Award Fee plan, the contractor is provided evaluation criteria at the start of the new award fee period that stays in effect for the entire period including interim evaluation. Of note, the performance criteria are incorporated by mutual consent of the parties 30 days prior to the start of the new Award Fee period. The Navy/Marine Corps Award Fee Guide does not stipulate timeframes for providing the contractors the results for the interim award fee evaluation other than "When evaluation periods exceed six months, an interim (mid-term) evaluation should be considered for maintaining good communication between the parties and consistency of contractual documentation." The BAMS UAS program strives to provide the results of the performance monitors interim evaluations to the contractor 30 days after the end of the interim award fee period "to ensure effective communication and provide feedback to the contractor on its performance".

(b) Include additional criteria for award fee period evaluation to provide the contractor more timely feedback at the end of the award fee evaluation period in accordance with the Department of Navy, "Navy/Marine Corps Award Fee Guide," July 2004.

RESPONSE: Concur. However, the BAMS UAS Award Fee Plan under contract does stipulate in Section 4.0 Award Fee Processes, paragraph c. End-of-Period Evaluations, "The FDO will determine the overall grade and earned award fee amount for the evaluation period within 75 calendar days after each evaluation period. The Navy/Marine Corps Award Fee Guide states that programs should consider "The FDO will determine the overall grade and earned award fee amount for the evaluation period within (insert number of days, but no more than 45) calendar days after each evaluation period.". The BAMS UAS Program will modify the Award Fee Plan to reflect providing the contractor an overall grade and earned award fee amount for the evaluation period within 45 calendar days after each evaluation period.

(c) Prohibit all contractor personnel from being members of the award fee review board and participating in the award fee determination process as required by the Department of Navy, "Navy/Marine Corps Award Fee Guide," July 2004.

RESPONSE: Partially concur. The Navy/Marine Corps Award Fee Guide states that; "The AFRB (*Award Fee Review Board*) is composed of Government personnel only whose experience in acquisition allows them to analyze and evaluate the contractor's overall performance." The intent of this paragraph was to eliminate a past DoD practice of allowing the Prime Contractor from being present during evaluations of its own performance. The BAMS UAS Award Fee Plan under contract stipulates in Section 3.0 Responsibilities, paragraph b. Award Fee Review Board, "The AFRB should not include Prime Contractor personnel and they should not be present during evaluation discussions or during presentations made by Performance Monitors." The DoDIG audit finding refers to a BAMS UAS PMA-262 program support contractor that had served as AFRB recorder and had signed the appropriate Non-Disclosure Agreement (NDA) to support the program office. A CSS contractor did serve as the recorder for the Award Fee Board, but he did not have any financial interest in the outcome of the award fee decision and this CSS simply acted as a scribe for the proceeding, and he was not a voting member of the Board. NAVAIR agrees that it would have been preferable to use a Government employee as the Board Recorder, but the integrity of the procurement process was never in issue. The CSS contractor had an NDA and acted only in a ministerial function to assist the Board.

(d) Issue award fee evaluation criteria at least 30 days before the start of the evaluation period as required by the Department of Navy, "Navy/Marine Corps Award Fee Guide," July 2004.

RESPONSE: Partially concur. The BAMS Award Fee Plan supports the Department of Navy, "Navy/Marine Corps Award Fee guidance. However, the BAMS UAS program incurred a 100 day delay as a result of protest by an unsuccessful offeror. The protest was not upheld by the GAO. The program restarted August 2008 and amended the Award Fee Plan to address the protest delay. Per the BAMS UAS Award Fee Plan under contract "Changes to this plan that are applicable to a current period will be incorporated by mutual consent of the parties." The program and contractor negotiated changes and amended the plan (Rev 1) dated 26-Mar-09 and the most significant changes were to Period 1 and Period 2 criteria, significant events, award fee allocations and period end dates. The original BAMS Award Fee Plan periods were to be one year in length but due to the mutual agreements Period 1 became seven months in length (contract award/restart date (11 Aug 2008 to 31 Mar 2009) and Period 2 became six months in length (1 April 2009 to 30 Sep 2009). The BAMS UAS Program does not concur with the reports section "Failed to provide timely feedback" but concurs the BAMS UAS Program was late for the first evaluation period.

(e) Provide the contractor an interim award fee evaluation for every award fee period longer than six months.

We renumbered draft report Recommendation 1.b.(2)(c) to final report Recommendation 1.b.(3)(b)

We renumbered draft report Recommendation 1.b.(2)(d) to final report Recommendation 1.b.(3)(c)

RESPONSE: Partially concur. The BAMS Award Fee Plan supports the Department of Navy, "Navy/Marine Corps Award Fee guidance. The BAMS UAS Award Fee Plan under contract contains "Section 4.0 Award Fee Processes, paragraph b. Interim Evaluation Process", in which the contractor is provided an interim award fee evaluation at the midpoint of the evaluation period. The BAMS Award Fee Plan envisioned periods of no more than twelve months in length, which would mean no interim period would exceed six months. As explained in response to paragraph (d) above, for Period 1 and Period 2 there were interim award fee periods in excess of six months, but the circumstances that created the extraordinarily long interim periods also contributed to the inability to provide interim award fee evaluations in a timely manner.. The BAMS UAS Program does not concur with the reports section "Failed to provide timely feedback" but concurs the BAMS UAS Program was late for providing an interim award fee evaluation during the first evaluation period.

(f) Follow the revised award fee plan when making award fee evaluation determinations.

RESPONSE: Concur. The BAMS UAS program will follow the revised award fee Plan under contract.

(g) Require performance monitor personnel to prepare written records of contractor performance and hold the performance monitor personnel accountable for their written documentation.

RESPONSE: Partially concur. The BAMS Award Fee Plan supports the Department of Navy, "Navy/Marine Corps Award Fee guidance with respect to performance monitors maintaining written records. The BAMS UAS Award Fee Plan under contract does call out in multiple places the responsibilities of members of the AFRB and performance monitor personnel the requirement to maintain written records of the contractor performance. The members of the AFRB and performance monitor personnel are provided training upon nomination to role of either AFRB member or performance monitor, and understand and take the responsibility of being a member of the AFRB seriously. The BAMS UAS Award fee Plan and the guide state the use of contractor self-assessment as a tool to "assist the AFRB in evaluating the contractor's performance". However, some of our performance monitors use, per their competency standards of practice, the contractor's deliverable data (i.e. Cost Performance Report and Integrated Master Schedule) and cross check this information against the contractor provided data with NAVAIR internal tools in verifying the accuracy of the contractor deliverables. The BAMS UAS Program will ensure performance monitors written documentation is captured in support of each evaluation period.

(h) Prohibit performance monitor personnel from being present during the award fee review board rating and fee determination discussions.

We renumbered draft report Recommendation 1.b.(2)(f) to final report Recommendation 1.b.(3)(a)

We renumbered draft report Recommendation 1.b.(2)(g) to final report Recommendation 1.b.(3)(d)

We renumbered draft report Recommendation 1.b.(2)(h) to final report Recommendation 1.b.(2)(c)

RESPONSE: Concur. The BAMS UAS Award Fee Plan will be updated to include the stipulation that Performance Monitors should not be present during the award fee review board rating and fee determination discussions.

(i) Exclude performance monitor personnel from being award fee review board members.

RESPONSE: Concur. The BAMS UAS Award Fee Plan will be updated to include the stipulation that performance monitors should not be AFRB members.

We renumbered
draft report
Recommendation
1.b.(2)(i) to final
report
Recommendation
1.b.(2)(d)

RECOMMENDATION 2: Assistant Commander for Contracts, Naval Air Systems Command, instruct the Broad Area Maritime Surveillance contracting officer to:

a. Conduct a cost-benefit analysis to determine whether a cost-plus-award-fee contract is appropriate for the Broad Area Maritime Surveillance program and include the analysis with the determination in the contract file.

RESPONSE: Do not concur. Appropriate analysis and justification for using a CPAF contract was conducted prior to the release of the BAMS solicitation. PMA-263 (BAMS was initially under PMA-263) provided a presentation titled "BAMS UAS Contract Incentive Discussion" dated 25 July 2006 to the AIR-2.4 Department Head for AIR-1.0 & PEO(U&W) programs. The 25 July 2006 presentation was followed by a presentation to AIR-2.0 on 17 October 2006, titled "BAMS UAS Overview for AIR 2.0." Additionally, the type of contract rationale was further documented in the Business Clearance, which was approved two levels above the Contracting Officer by AIR-2.4. The Business Clearance states, "Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits." The contractor is performing at this time. Should contract performance significantly decline, NAVAIR will re-examine the effectiveness of the contract type.

b. Adhere to the award fee criteria from the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Proper Use of Award Fee Contracts and Award Fee Provisions," April 24, 2007.

RESPONSE: Do not concur. The BAMS solicitation was released on 15 February 2007 and conformed to existing direction for the proper use of Award Fee contracts. Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Proper Use of Award Fee Contracts and Award Fee Provisions," April 24, 2007, was effective for solicitations issued after 1 August 2007. As such, it did not apply to BAMS.

c. Review the rollover award fee payment to determine an appropriate amount in accordance with the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Award Fee Contracts (FAR 16, DFARS 215, DFARS 216)," March 29, 2006.

RESPONSE: Partially concur. The OUSD(AT&L)) memorandum, "Award Fee Contracts (FAR 16, DFARS 215, DFARS 216)," March 29, 2006, states, "If rollover is used, the contractor may only earn a portion of the fee that was rolled over, even for subsequent excellent performance." The BAMS program met the intent of the directive by only making 75% of the unpaid fee available for future awards. By excluding 25%, the contractor was put on notice that the best they could do would be to recover 75% of the total unearned fee. For Award Fee Evaluation Period 1, Northrop Grumman Systems Corporation (NGSC) received \$891,763.05 of the total \$2,279,332.35 available for award. Seventy-five percent (\$1,040,677) of the unearned fee was placed in the Reserve Fee pool. In accordance with the Award Fee Plan, NGC received 100% for an "Excellent" rating, of the available fee for dealing with joint efficiencies between the Air

Force Global Hawk program and the BAMS UAS program. NAVAIR Contracts has reviewed the rollover award fee payment and concluded that the FDO (PMA-262 Program Manager) determination was within his authority. Since only 75% of the funds that could have been rolled over were paid to the contractor, the FDO's actions were in accordance with USD(AT&L) memorandum. While past actions are in accordance with policy, NAVAIR will re-examine the effectiveness of using "rolled over fee" under this contract.

d. Recoup any overpayment to the contractor for the rollover period based on the revised determination.

RESPONSE: Do not concur. As stated in recommendation 2.c. above, the execution of the rollover (reserve pool) met the intent of Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Award Fee Contracts (FAR 16, DFARS 215, DFARS 216)," March 29, 2006.

REVIEW OF INTERNAL CONTROLS: DOD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006, requires DOD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses in the management and implementation of the BAMS award fee process. Specifically, the BAMS contracting officer and program officials did not justify the use of a CPAF-type contract, develop an adequate award fee plan, perform proper contractor evaluations, or justify the use of a rollover award fee period. Implementing the recommendations in this report will improve the internal controls over the BAMS award fee process.

PEO(U&W) / NAVAIR COMMENT ON INTERNAL CONTROL WEAKNESS:

Partially Concur. As stated in previous responses, PEO(U&W)/NAVAIR believe that appropriate justification existed for the use of a CPAF type contract and that the resulting award fee plan was adequate. Where applicable, internal control monitoring will occur within PEO(U&W) and NAVAIR Contracts. The award fee plan will be modified to address the timeliness of assessments and associated contract modifications. The BAMS UAS program will present the timeline/actuals in which the assessment and contract modifications are made and the list of AFRB attendees, at semi-annual Executive Review Boards held with PEO(U&W). PEO(U&W) and NAVAIR Contracts concur with the previous use of the Reserve Pool/Rollover. Should the use of Reserve Pool/Rollover for the BAMS UAS be deemed appropriate in the future, detailed justification will be included in the contract file. PEO(U&W) and NAVAIR Contracts will be provided the details of the justification and ensure that contract files are appropriately maintained.



Inspector General Department of Defense